

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.6690 of 2005

Date of Decision : October 16, 2006.

Sohan Lal Petitioner

Vs.

Raj Kumar & another Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.M.L.Sarin, Senior Advocate
with Mr.Hemant Sarin, Advocate
for the petitioner.

Mr.Arun Jain, Advocate
for the respondents.

* * *

P.S.Patwalia, J. (Oral) :

The present revision petition has been filed by the tenant against concurrent findings recorded by the Rent Controller and the Appellate Authority allowing a petition for eviction filed by the landlord.

The facts of the case are not much in dispute. Eviction has been sought from a shop located in Patiala Town. The shop was let out to

the tenant on 1.8.1985 for carrying on *karyana* business. The original owner of the shop was one Charan Dass. He is survived by two sons being Jiwan Lal and Raj Kumar and one daughter Nirmala Devi. The present petition seeking eviction of the tenant has been filed by one of the sons Raj Kumar. Raj Kumar had retired as Deputy Controller (Finance and Accounts), from the State of Punjab on 30.09.1993. The petition was filed on 6.11.1997. In the petition Raj Kumar had pleaded that he required the shop in question for his own use as he wanted to start a business in the shop after his retirement. Elaborating his need, he stated that earlier his father had been carrying on the business of selling *bamboo/bamboo products* in the market. In fact the entire market is selling bamboo products and is known as "*baans bazar*". He stated that after his retirement he desired to shift to Patiala and re-start the said business which was carried on by his father.

In reply the petitioner/tenant contended that in fact the landlord was well settled in Chandigarh. It was pointed out by the petitioner-tenant that in December 1993, the petitioner had purchased a house in Chandigarh being House No.2189 in Sector 38. The house was a leasehold property. He was well settled in the said house. Apart from that it was contended that the landlord was empanelled as an Arbitrator with Punsup and other agencies and thus was well settled in Chandigarh. Therefore there was no bona fide personal necessity for the said property as pleaded by the petitioner.

After examining the pleadings of the parties and the evidence on the record, the learned Rent Controller concluded as hereunder :-

"13. The question that needs answer is

whether in the present set of circumstances, respondent no.1 was liable to be evicted from the premises in dispute. Although it was proved by respondent no.1 that after his retirement, the petitioner was working as an Arbitrator and was earning income by means of arbitration cases being conducted by him and also owned certain other property in his name and in the name of his wife. But the sufficiency of income or the petitioner earning income from the arbitration cases or any other sources would not be sufficient to extinguish the bonafide need felt by the petitioner of the shop in dispute. The question to be determined is not whether the petitioner had compelling necessity of the shop in dispute but the test would be that of need of requirement and although even if certain other properties were available with the petitioner, it was for the landlord i.e. petitioner to make choice of the premises which he required for his bonafide requirement and once the landlord had pleaded personal need to run business and had supported his case by appearing as a witness, he could not be disbelieved unless there was material to show and to prove that the need of the petitioner was not genuine. Had there been any malafide on the part

of the petitioner in filing the present application, it is dispelled from the fact that the respondent was in occupation of the shop in dispute since 1985 and no steps had been initiated by the petitioner i.e. landlord to enhance the rent of the disputed premises at any point of time.

As such the income being drawn by the petitioner from arbitration cases or from other sources and there being alternate places available for the petitioner to commence business and the fact that he was residing at Chandigarh could not extinguish his right for his bonafide requirement of the property in dispute in case he intended to set up a business as stated by him in association and help of his wife and son and unless any malafide was proved on the part of the petitioner, the petitioner was within his right to get the premises vacated and it was for the respondent no.1 to prove any malafide which he was unable to do so in the present case and further in case a tenant is evicted the possession may be restored to the petitioner in case he does not comply with the provisions of section 13(4) of the Rent Act and this issue is therefore, decided in favour of the petitioner and against the respondent.”

On the basis of the aforesaid findings the Rent Controller

ordered the eviction of the tenant from the said property. On the first appeal filed by the tenant, the matter was again considered by the Appellate Authority. The Appellate Authority confirmed the aforesaid findings recorded by the Rent Controller with the following observations :-

*“I find that mere fact that the entire service of the petitioner/landlord is at Chandigarh, does not mean that he will not leave Chandigarh. Though the petitioner has house at Chandigarh, which is on lease under the Chandigarh Administration, but the court is to view the desire of the landlord from the angle of the landlord. The tenant cannot direct the landlord where he should live. The landlord has specifically stated that the Patiala house has got two rooms, kitchen and bath room on the first floor. This house is joint with his brother. Brother of the petitioner has not come present to contest the claim. The mere fact that the house at Patiala is not approachable for car, does not mean that the petitioner merely on this account will not like to live here. He can get some garage some where else. In cross-examination, the landlord has clearly stated that from the very beginning, he has a desire to settle at Patiala. In **Harbilas Rai Bansal versus The State of Punjab & another, 1996 (1) Civil Court Cases, 110 (SC)**, the Hon'ble*

*Apex Court has held that even the non residential building can be got vacated on account of personal necessity. The learned counsel for the appellant has relied upon authority titled as **Ram Dass Mahajan vs. Brahm Bhushan, 1984 (1) All India Rent Control Journal, 27; Mohan Lal Jain versus Mohan Lal and another, 1973 All India Rent Control Journal, 249 and Brij Lal versus Arjan Singh, 1979 (2) Rent Control Reporter, 275. I find that wishful thinking is to be distinguished from the desire. It is normal human tendency that after moving around in service here and there, one may choose to live at his native place. Patiala is not far away from Chandigarh and is a fully developed city and the government is spending huge amount for the beautification of the city. Moreover, in the old age, if some body desires to come to his native place, the tenant cannot direct that he should live at his earlier place of service.”***

Hence the appeal filed by the petitioner-tenant was also dismissed.

I have heard Mr. Sarin, learned senior counsel on behalf of the petitioner and Mr.Arun Jain, Advocate for the respondent-landlord and have gone through the judgments of the courts below and have also perused the record. Mr. Sarin, learned counsel for the petitioner has raised four

contentions before me.

(i) Firstly Mr. Sarin contends that the respondent-landlord had not approached the Court with clean hands. He did not disclose the fact that he had purchased a residential house in Chandigarh wherein he was well settled. The house was purchased after he had retired. He further contended before the Appellate Authority that an impression was sought to be conveyed as if it was taken from the Administration on lease. The correct position was that in fact it was purchased on a long lease of 99 years. He therefore submits that since the respondent-landlord had not come to the Court with clean hands, he should be non suited on this ground.

(ii) Secondly while reading the findings recorded by the Appellate Authority, Mr. Sarin contends that the Appellate Authority has fallen in error by ordering eviction after specifically noticing that the question of wishful thinking was to be distinguished from desire. Mr.Sarin contends that it is merely on this that eviction has been ordered without considering the distinction between a mere desire and an element of need. He submits that unless the element of need is established, eviction cannot be ordered. For this proposition he has relied upon a judgment in the case of ***Phiroze Bamanji Desai vs. Chandrakant M. Patel and others*** reported as ***AIR 1974 SC 1059*** and a judgment in the case of ***M/s.Rahabhar Productions Pvt.Ltd. vs. Rajendra K.Tandon*** reported as ***1998 (1) RCR 482 (SC)***. He has further relied upon some observations made by Hon'ble Supreme Court in the case of ***Kempaiah vs. Lingaiah and others*** reported as ***2001 (8) SCC 718***.

(iii) Thirdly Mr. Sarin contends that the petition had been filed after an inordinate delay. The landlord had retired from service in September

1993. Thereafter he purchased a residential house in Chandigarh and was well settled there. The petition was filed in November 1997. This also, according to him, shows that there was no real need on the part of the landlord for the said premises as he was already well settled in Chandigarh. He thus submits that the petition was liable to be dismissed on this ground alone.

(iv) Lastly Mr.Sarin argues that the petitioner-tenant had filed an application for additional evidence before the Appellate Authority. He submits that the said application has also been dismissed. By way of additional evidence the petitioner-tenant wanted to show that the shop in dispute in this petition as also another shop is owned by the landlord at Topkhana Road. He therefore submits that order passed by the Rent Controller and the Appellate Authority should be set aside on this ground alone.

As against this Mr.Jain, learned counsel for the respondent-landlord submits that the matter has been examined by the Rent Controller as also the Appellate Authority on the basis of the evidence on record. Both the courts have come to the conclusion that there is a bona fide personal necessity and on that basis eviction has been ordered. He states that once firm findings of fact have been recorded by both the courts below, then the same should not be interfered with in the exercise of revisional jurisdiction by this Court. For this proposition he relies upon a judgment rendered by Hon'ble the Supreme Court in *Veneet Jain vs. Jagjit Singh* reported as **2000 (1) RCR 507**. Mr.Jain further contends that the fact that the respondent-landlord wanted to settle in Patiala immediately after his retirement is also made out by a reading of the statement of PW-2 Shri Vijay

Mohan Gupta, Advocate. A reading of his statement would show that he deposed that in 1993 itself the landlord had approached Shri Gupta so as to try to get the shop in question vacated so that he could occupy the said shop. However at that time the respondent-landlord was told that it was not possible to get a non-residential accommodation vacated on the ground of personal necessity. It was however thereafter when judgment was rendered by Hon'ble Supreme Court in *Harbilas Rai Bansal's* case (supra) wherein the Hon'ble Supreme Court had held that the ground of bona fide personal necessity was available for non-residential building as well that this eviction petition was filed shortly thereafter. He therefore submits that no interference is called for in the orders passed by the Rent Controller as also the Appellate Authority.

Countering the aforesaid submissions Mr.Sarin, learned counsel for the petitioner-tenant submits that where the courts below have allowed the petition by applying a wrong principle of law there interference by way of present petition is possible and rather called for. He relies upon judgments in the case of *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta* reported as *1999 (2) RCR 141 (SC)* and in the case of *Deena Nath vs. Pooran Lal* reported as *2001 (2) RCR 130 (SC)*. He further submits that while considering the statement of PW-2 Shri Vijay Mohan Gupta, this Court should not loose sight of the fact that he is none other than the brother-in-law of the landlord.

At the outset I would first examine the second argument raised by Mr.Sarin to the effect that in the present case the element of bona fide personal necessity is not made out. Mr.Sarin contends that the expression “bona fide requirement” means that there must be an element of

need before a landlord can be said to 'require' a particular premise for his own use. He states that the requirement of need is something more than a mere desire. He contends that the courts below have ordered the eviction in the present case merely after noticing the desire of the landlord. He therefore contends that the view taken by the courts below is not correct in law. To support his contention he firstly relies upon ***Phiroze Bamanji Desai's*** case (supra). He has drawn my attention to the following observations of the said judgment :-

“7. Now, the decision of the District Judge was based on two findings recorded by him in favour of the appellant. One was that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, and the other was that greater hardship would be caused to the first respondent by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. Both these findings were interfered with by the High Court and the question is whether the High Court was within its power in doing so. Taking up first for consideration the finding that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, it may be pointed out straightway that this finding was clearly one of the fact. The District Judge did not misdirect himself in regard

to the true meaning of the word 'requires' in Section 13 (1) (g) and interpreted it correctly to mean that there must be an element of need before a landlord can be said to 'require' premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation. This was the correct test applied by the District Judge to the facts found by him. If he had applied a wrong test on a misconstruction of the word 'requires' the finding recorded by him would have been vitiated by an error of law. But the correct test having been applied, the finding of the District Judge that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation was unquestionably a finding of fact and it was not competent to the High Court, in the exercise of its revisional power under Section 29 sub-section (3), to interfere with this finding by reappreciating the evidence. But, though such an exercise was not permissible, the High Court embarked on a reappraisal of the evidence and taking the view that the finding of fact reached by the District Judge was not correct, substituted its own finding of fact in place of that reached by the

District Judge. That was clearly outside the scope and ambit of the revisional power of the High Court under Section 29, sub-section (3)."

He has then referred to a judgment of the Hon'ble Supreme Court in ***M/s.Rahabhar Productions'*** case (supra) and has drawn my attention to the following observations of the said case :-

"18. *The phrase "bona fide need" or "bona fide requirement" occurs not only in the Delhi Rent Control Act but in the Rent Control legislation of other States also. What is the meaning of this phrase has been considered innumerable times by various High Courts as also by this Court and requires no citations to explain its legal implications. Even then reference may be made to the decision of this Court in **Ram Das v. Ishwar Chander and Ors., (1988) 32 SCC 131 : AIR 1988 SC 1422 : 1988 (1) RCR 625**, in which it was indicated that "bona fide need" should be genuine, honest and conceived in good faith. It was also indicated that landlord's desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The "desire" to become "requirement" must have the objective element of a "need" which can be decided only by taking all relevant circumstances into consideration so that the protection afforded*

to a tenant is not rendered illusory or whittled down. These observations were made in respect of the provisions contained in E.P.Urban Rent Restriction Act, 1949.”

He has further relied upon **Kempaiah's** case (supra) and drawn my attention to the following observations made in the said judgment :-

“8. Though it was pleaded that the appellant was under compulsion to vacate the premises under his occupation as his landlord was insisting to vacate the same, yet no evidence was led in that behalf. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable bona fide requirement as contemplated under Section 21(1)(h) of the Act. The word “require” used in clause (h) of sub-section (1) of Section 21 of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between “desire” and “require” lies in the insistence of the need. There is an element of “must have” in the case of “require” which is not present in the case of mere “desire”. The ground mentioned in clause (h) of sub-section (1) of Section 21 of the Act emphasises on the genuineness of the requirement

*of the landlord. They term “reasonable and bona fide requirement” are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court in **Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde** held that when the legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the rent control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard.”*

Relying on the aforesaid judgments learned counsel contends that it has been stated by the Hon'ble Supreme Court that the word “require” means something more than desire. There is an element of “must have” in the case of “require” which is not present in the case of “mere desire”. On the other hand, learned counsel for the respondent-landlord submits that the bona fide personal necessity of the landlord must be an outcome of an honest need to occupy the premises himself in contra-distinction to a mere

pretext or a pretence to evict a tenant. He states that in all such cases the court should place itself in place of the landlord and then examine whether in the given facts the plea of the landlord can be said to be natural, real and honest. If the answer is in the positive then bona fide requirement is made out. He further submits that the court should also give freedom to the landlord to choose the accommodation which he feels is more suited for his needs. To support this contention he has drawn my attention to the observations made by the Hon'ble Supreme Court in the judgment of **Shiv Sarup Gupta's** case (supra). He has drawn my attention to the following observations in the said judgment :-

“12. Chambers 20th Century Dictionary defines bona fide to mean 'in good faith : genuine'. The word 'genuine' means 'natural : not spurious : real; : pure : sincere". In Law Dictionary, Mozley and Whitley define bona fide to mean 'good faith, without fraud or deceit'. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bona fide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere

pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself – whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective

standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

Mr.Jain then drew my attention to a judgment of Hon'ble Supreme Court in the case of ***Sarla Ahuja vs. United India Insurance Company Ltd.*** reported as ***1998 (2) RCR 533*** where the Hon'ble Supreme Court had observed that when the landlord makes out a prima facie case regarding his bona fide personal necessity then it is open to the Rent Controller to draw a presumption that requirement is bona fide. The relevant observations of this judgment are as hereunder :-

“14. *The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for*

his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms of the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

Having examined the judgments referred to herein above I am of the opinion that no doubt the requirement of bona fide personal necessity is more than a mere desire. While examining the requirement the court would have to consider whether the plea is a mere pretext to evict the tenant on the part of the landlord or that the landlord has a sincere, honest need to occupy the premises for himself or any member of his family. The court would have to examine the facts in each case in order to reach a conclusion as to whether or not the plea set up by the landlord to occupy the premises is natural, real, sincere and honest.

When examined in the light of the view taken by the Hon'ble Supreme Court as aforesaid I do not find any error in the conclusions recorded by the Rent Controller as also the Appellate Authority. It has

come on the record by way of evidence of PW-2 Shri Vijay Mohan Gupta, Advocate that shortly after his retirement in 1993 itself, the landlord had inquired from him as to whether he could get the shop vacated on the ground of his bona fide personal necessity as he wished to occupy the same. However as the law stood at that time this ground was not available for non-residential premises. It is in these circumstances that the landlord in the mean time purchased a house in Chandigarh and started residing there. At the same time, the urge to settle after retirement at the place of one's roots and to re-start the business carried on by one's father does lead me to conclude that the requirement of the landlord is more than a desire and is rather a need at this stage of his life. This is all the more so in view of the fact that the landlord has stated that all his relations on his paternal side reside in Patiala and he also had been a permanent resident of the said town before his employment. The fact that it is not a pretext to evict the tenant is also clear from the fact that right from the year 1985 onwards, the landlord never demanded any increase in rent from the tenant. Thus I find no error in the view taken by the courts below. The mere fact that the Appellate Authority at some places has used the word "desire" while considering the aspect of bona fide personal necessity would not detract from the conclusion that the landlord has in the present case succeeded in showing the bona fide personal necessity for the shop in question. It is the admitted position that the shop also has a residential accommodation where the landlord can reside and at the same time re-start the same business which was carried on by his father. Thus I find no merit in the contention raised by the learned counsel for the petitioner that the landlord had not succeeded in showing bona fide personal necessity in the present case.

Adverting now to the other contentions raised by the learned counsel for the petitioner. Mr.Sarin contends that the landlord had not disclosed in his petition that he had purchased a residential house in Chandigarh after his retirement. He further contends that before the Appellate Authority, an impression was sought to be conveyed as if it was taken from the Administration on lease whereas actually the house was a leasehold property acquired by the landlord. Thus he states that the landlord had not come to the court with clean hands and should be non suited on this ground alone. The controversy in the present case relates to eviction from a shop situated within the limits of Municipal Corporation, Patiala. The landlord had stated in his petition that he had not vacated any shop after the commencement of the Act in the urban area of Patiala. It was the case of the landlord that he desired to reside in Patiala as that is his home town and he had been a permanent resident of the city before his employment. He had further stated that all his relations on his paternal side reside in that town. Therefore I do not find the present case to be one where the landlord can be non suited on the ground of not disclosing in his petition the fact that he had a house in Chandigarh which he had acquired on leasehold basis. It is otherwise the admitted position that in replication this fact had been duly disclosed by the landlord himself. Therefore I find no merit in this contention raised by the learned counsel for the petitioner.

Learned counsel for the petitioner then contends that the landlord had retired in the year 1993. The present petition for eviction was filed in November 1997. In the mean time the landlord had purchased a residential house in Chandigarh. Thus he states that the petition was filed after an inordinate delay. This ground was raised before the Appellate

Authority as well. It was rejected by the Appellate Authority on the ground that the landlord had examined Shri Vijay Mohan Gupta as AW-2 who stated that in the year 1993 itself, the landlord had inquired as to whether he could get the property vacated on the ground of bona fide personal necessity. He was told at that time that this ground was not available for non-residential buildings. The law in this regard was changed with the judgment of the Hon'ble Supreme Court in *Harbilas Rai Bansal's* case (supra) in the year 1996. This petition was filed shortly thereafter in 1997. Thus it could not be said to be delayed. I find no error in this view taken by the Appellate Authority. Consequently I find no merit in this petition as well.

Lastly Mr. Sarin has argued that the petitioner-tenant had filed an application for additional evidence which was wrongly dismissed by the Appellate Authority. A reading of the order of the Appellate Authority would show that the tenant had sought to produce a site plan of the shop in dispute, its adjoining shop, another shop at Topkhana Road and a house occupied by the landlord at Chandigarh. The Appellate Authority found that these documents were not relevant to adjudicate upon the controversy in issue and this was merely an effort to delay the decision of the appeal. I find no error in the view taken by the Appellate Authority. In my opinion in the facts of this case production of the site plans would not be relevant for determining the controversy as to whether or not the shop in dispute was required by the landlord. Thus I find no merit in this plea raised by the learned counsel as well.

For the aforesaid reasons I find no merit in this revision petition and the same is accordingly dismissed. At this stage Mr. Sarin, learned

counsel for the petitioner contends that his client may be given some reasonable time to vacate the premises. Keeping in view the facts and circumstances of this case I grant three months' time from today, to the tenant to vacate the shop. This would however be subject to the tenant furnishing an undertaking in this court within four weeks from today that he would hand over the vacant possession of the shop to the landlord at the end of three months.

October 16, 2006

monika

(P.S.Patwalia)

Judge